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Mortgage

PHH fined $28 million by NYDFS for "shoddy" mortgage servicing

Lender's actions echo several crisis-era practices

November 9, 2016, 6:02 pm *By Ben Lane*

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When **PHH** reported its third quarter earnings on Tuesday, the company made several disclosures, including that it planned to exit its private-label origination business, that it planned to sell off its **Ginnie Mae** mortgage servicing rights portfolio, and that it was facing disciplinary action from the **New York Department of Financial Services**.

The company didn't provide any details on the nature of the disciplinary action, the reason behind it, or an expected timeline, other than to say it anticipated the matter being resolved "in the fourth quarter."

As it turned out, the wait to find out what exactly the situation with the NYDFS was proved to be exactly one day, as the NYDFS announced Wednesday that it is fining PHH $28 million for what it calls "shoddy mortgage origination and servicing practices."

In announcing the fine, the NYDFS provided a list of the violations that PHH committed, and it reads like a laundry list of some of the same practices that gave the mortgage business a bad name

before, during and after the financial crisis.

According to the NYDFS, a series of investigations uncovered "persistent shortcomings" in PHH's mortgage origination and servicing practices, including discrepancies in how mortgage foreclosures were documented and processed.

The NYDFS said that PHH Mortgage Corp. and its affiliate, **PHH Home Loans**, failed to give borrowers accurate good faith estimates on loans, imposed larger fees on unsuspecting borrowers at loan closings and, in some cases, failed to provide documentation showing that borrowers received discounts that they had bargained for.

But that's not all. Far from it, in fact.

According to the NYDFS, PHH Mortgage "lacked formal and comprehensive policies and processes for executing foreclosure-related documents."

The NYDFS said that its examiners found that some PHH employees executed foreclosure documents despite conducting "little more than perfunctory reviews" of the foreclosure materials. Additionally, some of those employees lacked personal knowledge about the facts in the documents they swore to.

PHH Mortgage also did not adequately monitor the operations of its outside vendors who were contracted to perform mortgage servicing related tasks, including foreclosure attorneys whose actions on behalf of the company had a direct impact on borrowers in financial distress, the NYDFS said.

The NYDFS also said that PHH Home Loans failed to establish adequate controls to prevent mortgage loan originators employed by one PHH entity from originating loans in another PHH entity's name, or to prevent employees whose mortgage loan originator licenses had expired or been withdrawn from taking loan applications.

According to the NYDFS, PHH Home Loans also employed inadequate controls and was unable to ensure that the electronic signatures

appearing on loan applications were those of the mortgage loan originators who actually took the application from the borrower.

PHH Home Loans' mortgage loan originator compensation plan also failed to prevent mortgage loan originators from steering borrowers into "risky or unnecessarily high-cost loans," the NYDFS said.

PHH Home Loans' loan originator compensation plan also allowed a mortgage loan originator's compensation to be based on the terms of the particular loan brokered.

According to the NYDFS, its examiners were performing follow-up exams for previously identified deficiencies at PHH and found that in in some cases, unlicensed individuals were allowed to originate mortgage loans and that PHH failed to retain copies of required pre-application disclosures to some customers.

As further evidence of internal deficiencies at the company, the NYDFS said that in January 2016, PHH disclosed that, due to a coding error in an automated invoice processing system, the company improperly assessed attorneys' fees of $1.2 million against New York borrowers already facing the hardship of default.

"Despite first discovering this error in June 2014, PHH delayed disclosing the issue to the Department for 18 months," the NYDFS said.

According to the NYDFS, PHH has since notified its office that it made full financial restitution to borrowers affected by this error.

According to the NYDFS, PHH will pay a $28 million fine as part of a consent order, which also requires PHH to engage an independent third-party auditor who will work to verify the identity of borrowers impacted by other improper closing costs so PHH can make refunds to those consumers.

The auditor will also review PHH's business practices to ensure compliance with mortgage

origination and servicing laws and regulations, the NYDFS said.

"New Yorkers deserve peace of mind when shopping for a mortgage and this administration has zero tolerance for lenders who seek to cut corners and disregard the law at the expense of those seeking the American Dream in the Empire State," said New York Gov. Andrew Cuomo. "We remain committed to rooting out unscrupulous practices in the mortgage industry and will continue to act vigorously to protect homeowners in every corner of New York."

NYDFS Superintendent Maria Vullo said that the action taken against PHH is another sign of the state's "commitment" to its residents.
"Over the last decade, too many homeowners have suffered as a result of servicers placing profit above compliance with consumer protection laws," Vullo said. "Today's action demonstrates New York's commitment to making sure that consumers who have been wronged receive restitution and the parties that are responsible pay appropriate penalties and take necessary remedial action to ensure such behavior does not occur in the future."

In a statement, PHH said that the issues identified by the NYDFS are "legacy" issues that took place from 2010-2014.

"We have agreed to resolve concerns raised by the DFS arising from legacy servicing and origination examinations conducted between 2010 and 2014 in order to avoid the distraction and expense of litigation," PHH said in a statement.

"While we provided detailed responses to the examination findings and worked cooperatively with the DFS on this matter, we concluded that settling these matters is in the best interest of PHH and its constituents," PHH continued.

"As acknowledged by the DFS in the agreement, PHH has made substantial strides in improving our servicing operations," PHH added. "These enhancements are part of our ongoing

enhancements are part of our ongoing investments in compliance, technology, process management, and oversight infrastructure. We remain committed to making necessary enhancements in our operations and serving our customers in a fair and appropriate manner."

[*Update: The headline of this article and the text are now updated to accurately reflect the nature of the disciplinary action taken against PHH.*]

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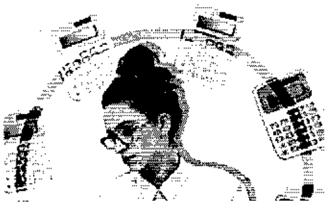

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